

REMARKS

This responds to the non-final Office Action dated 10 August 2007 (Paper No./Mail Date 20070804). Claims 1-43 are presently pending in the application, each of which Applicants believe is in condition for allowance. Applicants respectfully request reexamination and reconsideration in light of the following remarks.

Claim Rejections – 35 U.S.C. § 103

In the Action, the Examiner rejected claims 1-5, 9-15, 19-25, 31-35, and 39-43 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Publication No. 2004/0083245 to Beeler (“Beeler”) in view of U.S. Patent Publication No. 2002/0087588 to McBride et al. (“McBride”), claims 6-8, 16, 17, 26-30, 36, and 37 as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2003/00221076 to Milligan et al. (“Milligan”), and claims 18 and 38 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Beeler in view of McBride and further in view of U.S. Patent Publication No. 2002/0095616 to Hastings (“Hastings”). Applicants respectfully traverse these rejections.

Independent claims 1, 41, and 42 each recite, *inter alia*, “copying each allocation unit occupied by a plurality of files of the file system to a locally-stored image file [that is] is located within the same partition as the file system being backed up.” Similarly, independent claim 21 recites an apparatus for backing up a file system comprising, *inter alia*, “a local imager to copy each allocation unit occupied by a plurality of files of the file system to a locally-stored image file [that is] located within the same partition as the file system being backed up.”

In addition, independent claims 11 and 43 each recite a method for restoring a file system comprising, *inter alia*, “access[ing] a locally-stored image file located within the partition to which the file system is to be restored.” Similarly, independent claim 31 recites an apparatus for restoring a file system comprising, *inter alia*, “an image locator to find a locally-stored image file located within the partition to which the file system is to be restored.”

In contrast, and as conceded by the Examiner on page 3 of the Office Action, “Beeler does not explicitly teach” that a file system may be backed up to or restored from a “locally-stored image file [that] is [located] within the same partition” as the file system. In an attempt to remedy the conceded deficiencies of Beeler, the Examiner has cited McBride as allegedly teaching of “a plurality of files and [a] locally-stored image file [] within the same partition.” McBride, however, fails to remedy the conceded deficiencies of Beeler.

For example, while McBride may teach of a “local backup data storage location . . . [that] may be a hard drive in the host computer or in a computer networked to the host computer,” McBride fails to contain any disclosure, teaching, or suggestion of a locally-stored image file located within the same partition as a file system to be backed up or restored, as is required by the claims of the present application. *See* Par. [0016]. Indeed, none of the passages cited by the Examiner from McBride (paragraphs [0016], [0013], and [0035]) explicitly teach of a locally-stored image file located within the same partition as a file system to be backed up or restored.

Moreover, as explained below, the figures and text of McBride teach away from the Examiner's position. For example, as illustrated in FIG. 24 below, McBride explicitly teaches of backing up data from a first storage device (source 551) to a

second backup storage device (destination 552) that is different from, and located within a different partition as, the first storage device. As seen in this figure, source 551 ("C:\My Documents") is located on a client's hard drive, while the destination 552 ("Web Drive") for the backup is located within an entirely different partition on an entirely different device and machine (web server). McBride, therefore, clearly fails to disclose, teach, or suggest a locally-stored image file located within the same partition as a file system to be backed up or restored.

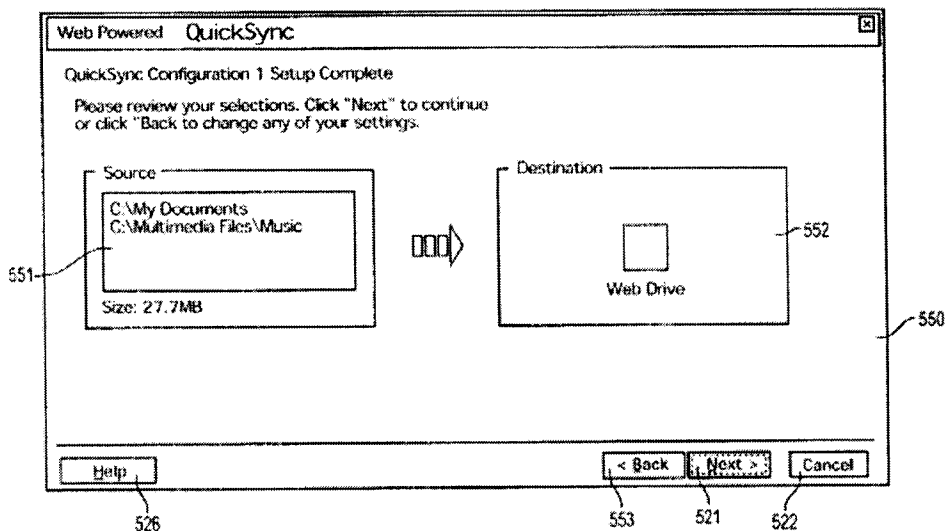


FIG. 24

Accordingly, because Beeler and McBride, either alone or in combination, fail to disclose, teach or suggest each and every limitation of independent claims 1, 11, 21, 31, and 41-43, a *prima facie* case of obviousness has not been established. See, e.g., *In re Royka*, 490 F.2d 981, 985 (CCPA 1974) (holding that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art) (emphasis added); accord. MPEP § 2143.03 ("To establish a *prima facie* case of obviousness ... the prior art reference (or references when

combined) must teach or suggest all the claim limitations.”) (emphasis added). Applicant therefore respectfully requests withdrawal of this rejection.

Moreover, aside from the novel limitations recited therein, claims 2-10, 12-20, 22-30, and 32-40 are also allowable at least by virtue of their dependency upon allowable base claims 1, 11, 21, 31, and 41-43. Applicant respectfully requests, therefore, that the various rejections of claims 1-43 under 35 U.S.C. § 103 be withdrawn, and these claims be allowed.

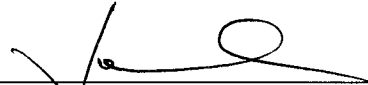
Conclusion

For at least the foregoing reasons, Applicants believe that each of the presently pending claims in this application is in immediate condition for allowance. Accordingly, Applicants respectfully request a favorable action on the merits. If the Examiner has any further comments or suggestions, Applicants invite the Examiner to telephone the undersigned attorney to expedite the handling of this matter.

Respectfully submitted,

Date: _____

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